

PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT ►

Neb. Rev. Stat. §§48-2701 to 48-2711

[Current Through 2014 Regular Session]

STATE OF NEBRASKA

DAVE HEINEMAN, Governor

DEPARTMENT OF LABOR

JOHN H. ALBIN, Acting Commissioner

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TEXT OF THE LAW

48-2701. Act, how cited. Sections 48-2701 to 48-2711 shall be known and may be cited as the Professional Employer Organization Registration Act.

Source: Laws 2010, LB579, § 1.

Operative Date: January 1, 2012.

48-2702. Terms, defined. For purposes of the Professional Employer Organization Registration Act:

(1) Client means any person who enters into a professional employer agreement with a professional employer organization;

(2) Co-employer means either a professional employer organization or a client;

(3) Co-employment relationship means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between the client employer and a professional employer organization as co-employers pursuant to a professional employer agreement and the act. In such a co-employment relationship:

(a) The professional employer organization is entitled to enforce only such employer rights and is subject to only those employer obligations specifically allocated to the professional employer organization by the professional employer agreement or the act;

(b) The client is entitled to enforce those rights and is obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement or the act; and

(c) The client is entitled to enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or the act;

(4) Covered employee means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria:

(a) The individual has received written notice of co-employment with the professional employer organization; and

(b) the individual's co-employment relationship is pursuant to a professional employer agreement subject to the act.

Individuals who are officers, directors, shareholders, partners, and managers of the client or who are members of a limited liability company if such company is the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees, if such individuals meet the criteria of this subdivision and act as operational managers or perform day-to-day operational services for the client;

(5) Department means the Department of Labor;

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(6) Direct-hire employee means an individual who is an employee of the professional employer organization within the meaning of the Nebraska Workers' Compensation Act and who is not an employee of a client and who is not a covered employee;

(7) Master policy means a workers' compensation insurance policy issued to a professional employer organization that provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct-hire employees or that provides coverage for one client in addition to the professional employer organization's direct-hire employees. Two or more clients insured under the same policy solely because they are under common ownership are considered a single client for purposes of this subdivision;

(8) Multiple coordinated policy means a workers' compensation insurance policy that provides coverage for only a single client or group of clients under common ownership but with payment obligations and certain policy communications coordinated through the professional employer organization;

(9) Person means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

(10) Professional employer agreement means a written contract by and between a client and a professional employer organization that provides:

(a) For the co-employment of covered employees;

(b) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

(c) That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

(11) (a) Professional employer organization means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization or PEO.

(b) The following are not professional employer organizations or professional employment services for purposes of the act:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of sections 414(b) and (c) of the Internal Revenue Code;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; and

(iii) Providing temporary help services;

(12) Professional employer organization group means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

(13) Professional employer services means the service of entering into co-employment relationships;

(14) Registrant means a professional employer organization registered under the act;

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(15) Temporary help services means services consisting of a person:

- (a) Recruiting and hiring its own employees;
- (b) Finding other organizations that need the services of those employees;
- (c) Assigning those employees
 - (i) to perform work at or services for the other organizations to support or supplement the other organizations' workforces,
 - (ii) to provide assistance in special work situations, including employee absences, skill shortages, or seasonal workloads, or
 - (iii) to perform special assignments or projects; and
- (d) Customarily attempting to reassign the employees to other organizations when they finish each assignment; and

(16) Working capital means current assets less current liabilities as defined by generally accepted accounting principles.

Source: Laws 2010, LB579, § 2.

Operative Date: January 1, 2012.

48-2703. Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.

(1) Nothing contained in the Professional Employer Organization Registration Act or in any professional employer agreement shall affect, modify, or amend any collective-bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et seq.

(2) (a) Nothing contained in the Professional Employer Organization Registration Act or any professional employer agreement shall:

- (i) Diminish, abolish, or remove rights of covered employees as to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;
- (ii) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the professional employer organization has specifically agreed otherwise in writing;
- (iii) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or the act; or

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(iv) Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices. A co-employer shall, immediately after receipt of such notice, notify the other co-employer of such receipt and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

(b) (i) Nothing contained in the act or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(ii) A covered employee who is required to be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

(c) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such licensing, registration, or certification requirements.

(d) A client shall have the sole right to direct and control the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of such covered employees or clients.

(3) With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into a professional employer agreement with a professional employer organization or uses the services of a professional employer organization.

Source: Laws 2010, LB579, § 3.

Operative Date: January 1, 2012.

48-2704. Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration application; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.

(1) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Professional Employer Organization Registration Act.

(2) A person who is not registered under the Professional Employer Organization Registration Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

(3) Each applicant for registration under the act shall provide the department with the following information:

(a) The name or names under which the professional employer organization conducts business;

(b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

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- (c) The professional employer organization's taxpayer or employer identification number;
- (d) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;
- (e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interest of the professional employer organization;
- (f) A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and
- (g) A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group. At the time of initial registration, the applicant shall submit the most recent audit of the applicant, which audit may not be older than thirteen months. Thereafter, a professional employer organization or professional employer organization group shall file on an annual basis, within one hundred eighty days after the end of the professional employer organization's fiscal year, a succeeding audit. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 48-2705 and present financial statements reviewed by a certified public accountant.

- (4)
 - (a) Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.
 - (b) Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application under subsection (7) of this section or a full registration if there are more than fifty covered employees. The department may issue an interim operating permit for the period the registration application is pending if the professional employer organization is currently registered or licensed by another state and the department determines it to be in the best interests of the potential covered employees.
- (5) Within one hundred eighty days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

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(6) Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Professional Employer Organization Registration Act on a combined or consolidated basis if each member of the professional employer organization group guarantees the financial capacity obligations under the act of each other member of the professional employer organization group. If a professional employer organization group submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(7) (a) A professional employer organization is eligible for a limited registration under the act if such professional employer organization:

(i) Submits a properly executed request for limited registration on a form provided by the department;

(ii) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(iii) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(iv) Does not have more than fifty covered employees employed or domiciled in this state on any given day.

(b) A limited registration is valid for one year and may be renewed.

(c) A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

(d) Section 48-2705 does not apply to applicants for limited registration.

(8) The department shall maintain a list of professional employer organizations registered under the act that is readily available to the public by electronic or other means.

(9) The department may prescribe forms necessary to promote the efficient administration of this section.

(10) The department shall, to the extent practical, permit by rule and regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department. Such rule and regulation may provide for the acceptance of electronic filings and other assurance by an independent and qualified entity approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of this section and section 48-2705. Such rule and regulation shall permit a professional employer organization to authorize the entity approved by the department to act on the professional employer organization's behalf in complying with the registration requirements of the act, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of the act.

(11) All records, reports, and other information obtained from a professional employer organization under the act, except to the extent necessary for the proper administration of the act by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

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Source: Laws 2010, LB579, § 4.

Operative Date: January 1, 2012.

48-2705. Financial commitment required; filing with department.

(1) Except as provided in subsections (7) and (10) of section 48-2704, each professional employer organization or professional employer organization group shall have either:

(a) Positive working capital of at least one hundred thousand dollars at the time of initial registration and each renewal thereafter as reflected in the financial statements submitted to the department with the initial registration and each annual renewal; or

(b) (i) If the positive working capital of the professional employer organization is less than one hundred thousand dollars, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars; or

(ii) If the financial statement submitted to the department indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than one hundred thousand dollars plus an amount that is sufficient to cover that deficit.

(2) The commitment described in subdivision (1)(b) of this section shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer organization group, against any relevant third party, or both.

Source: Laws 2010, LB579, § 5.

Operative Date: January 1, 2012.

48-2706. Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of notice; responsibilities of client; liability; sales tax liability; health benefit plan.

(1) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(2) Except as specifically provided in the Professional Employer Organization Registration Act or in the professional employer agreement, in each co-employment relationship:

(a) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(b) The professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the act or in the professional employer agreement. The rights, duties, and obligations of the professional employer

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organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the act during the term of co-employment by the professional employer organization of such covered employee; and

(c) Unless otherwise expressly agreed by the professional employer organization and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

(3) Except as specifically provided in the Professional Employer Organization Registration Act, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(a) The allocation of rights, duties, and obligations as described in this section;

(b) A provision that the professional employer organization shall have responsibility to pay wages to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this section, wages does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement;

(c) A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the act and the professional employer agreement. The client shall have a right to hire, discipline, and terminate a covered employee; and

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

(4) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide, and the client shall post in a conspicuous place at the client's worksite, the following:

(a) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

(b) Any notice required by the state relating to unemployment compensation and the minimum wage.

(5) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(a) A client shall be solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business;

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(b) A client shall be solely responsible for

(i) directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client and

(ii) the acts, errors, or omissions of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

(c) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(d) Nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement; and

(e) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

(6) When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization charges the client a different amount than it is charged by the authorized insurer.

(7) For purposes of this state or any county, municipality, or other political subdivision thereof:

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Professional Employer Organization Registration Act shall relieve a client of any sales tax liability with respect to its goods or services;

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

(c) Any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Any benefit or monetary consideration that meets the requirements of mandates imposed on a client and that is received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(d) In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

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(8) A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

Source: Laws 2010, LB579, § 6.

Operative Date: January 1, 2012.

Cross References:

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2707. Funds; records. Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

Source: Laws 2010, LB579, § 7.

Operative Date: January 1, 2012.

48-2708. Retirement and employee welfare benefit plans.

(1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

Source: Laws 2010, LB579, § 8.

Operative Date: January 1, 2012.

Cross References:

Multiple Employer Welfare Arrangement Act, see section 44-7601

Small Employer Health Insurance Availability Act, see section 44-5223

48-2709. Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.

(1) The responsibility to obtain workers' compensation coverage for employees covered by the professional employer agreement and for other employees of the client shall be allocated in the professional employer agreement to the client, the professional employer organization, or both, in accordance with this section. If any such responsibility is allocated to the professional employer organization, the professional employer organization shall:

(a) Advise the client of the provisions of subdivisions (9) and (10) of section 48-115;

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- (b) Advise the client of its obligation to obtain an additional workers' compensation insurance policy if the professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement; and
 - (c) Provide the client with the name of the insurer providing coverage, the policy number, claim notification instructions, and any itemized charges that are to be made for workers' compensation coverage within ten days after enrollment.
- (2)
 - (a) If all employees of the client are not covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client may be written to limit coverage to those employees who are co-employees of the professional employer organization and the client. If a professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement, then the client shall obtain an additional workers' compensation insurance policy. The policy obtained by the client shall be written to cover any and all employees not covered by the professional employer organization's policy, including any potential new or unknown employees. All insurance policies issued pursuant to this subsection shall be subject to and shall comply with the requirements of this subsection and any rule or regulation adopted by the Department of Insurance.
 - (b) If all employees of the client are covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client must be written to cover any and all employees of the client, including potential new or unknown employees that may not be covered employees under the agreement.
 - (c) A professional employer organization shall not split coverage that it obtains for a client between two or more policies.
 - (d) A professional employer organization shall not split coverage for its direct-hire employees between two or more policies.
 - (e) The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.
- (3) If the professional employer agreement allocates responsibility to the professional employer organization to obtain workers' compensation coverage only for co-employees, then the professional employer organization shall provide the following information to the administrator of the Nebraska Workers' Compensation Court. Such information shall be provided for any such professional employer agreement in effect on January 1, 2012, and prior to the effective date of any new professional employer agreement or any amendment of an agreement adding such a provision after January 1, 2012, and shall be provided in a form and manner prescribed by the administrator:
 - (a) The names and addresses of the client and the professional employer organization;
 - (b) The effective date of the professional employer agreement;
 - (c) A description of the employees covered under the professional employer agreement;
 - (d) Evidence that any and all other employees of the client are covered by a valid workers' compensation insurance policy; and
 - (e) Any other information the administrator may require regarding workers' compensation coverage of the professional employer organization, the client, or the covered employees.
- (4) If workers' compensation coverage for a client's employees covered by the professional employer agreement and for other employees of the client is not entirely available in the voluntary market, then

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assigned risk workers' compensation coverage written subject to section 44-3,158 may only be written on a single policy that covers all employees and co-employees of the client. Assigned risk workers' compensation insurance for the professional employer organization may also be written, but only on a basis that covers its direct-hire employees and excludes employees and co-employees of its clients. The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(5) If a master policy or multiple coordinated policy providing coverage to a client is obtained by a professional employer organization, then the professional employer organization shall provide the client with a notice that the client shall conspicuously post at its workplace. Such notice shall provide the name and address of the workers' compensation insurer and the individual to whom claims shall be directed. If more than one workers' compensation insurer provides coverage for employees and co-employees of the client, the client shall post such information for all such workers' compensation insurers.

(6) Both the client and the professional employer organization shall be considered the employer for purposes of coverage under the Nebraska Workers' Compensation Act. The protection of the exclusive remedy provision of the act shall apply to the professional employer organization, to the client, and to all covered employees and other employees of the client regardless of which co-employer obtains such workers' compensation coverage.

(7) If a client receives notice of the cancellation, nonrenewal, or termination of workers' compensation coverage obtained by the professional employer organization, then the client may withdraw from the professional employer agreement without penalty unless the client is notified by the professional employer organization of replacement coverage within fifteen days after the notice.

(8) A professional employer organization shall not impose any fee increase on a client based on the actual or anticipated cost of workers' compensation coverage without giving the client at least thirty days' advance notice and an opportunity to withdraw from the professional employer agreement without penalty.

(9) The professional employer organization shall not make any materially inaccurate, misleading, or fraudulent representations to the client regarding the cost of workers' compensation coverage. If the professional employer organization charges the client an itemized amount for workers' compensation coverage, the professional employer organization shall provide the client with an accurate and concise description of the basis upon which it was calculated and the services that are included. A professional employer organization shall not charge a client an itemized amount for workers' compensation coverage that is materially inconsistent with the actual amounts that the professional employer organization is charged by the insurer, given reasonably anticipated loss-sensitive charges, if applicable, reasonable recognition of the professional employer organization's costs, and a margin for profit.

Source: Laws 2010, LB579, § 9.

Operative Date: January 1, 2012.

Cross References:

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2710. Fees; Professional Employer Organization Cash Fund; created; use; investment.

(1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) There is hereby created the Professional Employer Organization Cash Fund to be administered by the department. Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Money in the fund may be used for the administration of the Professional Employer Organization

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Registration Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB579, § 10.

Operative Date: January 1, 2012.

Cross References:

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

48-2711. Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.

(1) (a) A person shall not knowingly:

(i) Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Professional Employer Organization Registration Act;

(ii) Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act; or

(iii) Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(b) Any person violating this subsection is guilty of a Class I misdemeanor.

(2) Disciplinary action may be taken by the department:

(a) Against a person for violation of subsection (1) of this section;

(b) Against a professional employer organization or a controlling person of a professional employer organization upon the conviction of a professional employer organization or a controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

(c) Against a professional employer organization or a controlling person of a professional employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

(d) Against a professional employer organization or a controlling person of a professional employer organization for a willful violation of the act or any order or regulation issued by the department under the act.

(3) (a) Upon finding, after notice and opportunity for hearing, that a professional employer organization, a controlling person of a professional employer organization, or a person offering professional employer services has violated one or more provisions of this section, and subject to any appeal required, the department may:

(i) Deny an application for registration;

(ii) Revoke, restrict, or refuse to renew a registration;

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(iii) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation;

(iv) Place the registrant on probation for the period and subject to conditions that the department specifies; or

(v) Issue a cease and desist order.

(b) A decision by the department under this subsection may be appealed in accordance with the Administrative Procedure Act.

(4) The department may adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of this section and sections 48-2704, 48-2705, and 48-2710.

Source: Laws 2010, LB579, § 11.

Operative Date: January 1, 2012.

Cross References:

Administrative Procedure Act, see section 84-920.